

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:03-CR-00077-F-1

No. 7:17-CV-00047-F

DANNY L. BLACKMON,)
 Petitioner,)
 v.)
)
UNITED STATES OF AMERICA,)
 Respondent.)

ORDER

This matter is before the court on Danny L. Blackmon's Motion to Proceed in Forma Pauperis [DE-131] and his motion filed pursuant to 28 U.S.C. § 2255 [DE-130].

Motion to Proceed in Forma Pauperis

Blackmon appears to be under the mistaken impression that there are fees associated with the filing of his § 2255 motion. There are no fees associated with filing a § 2255 motion. Accordingly, Blackmon's Motion to Proceed in Forma Pauperis [DE-131] is DENIED.

§ 2255 Motion

Blackmon previously filed a § 2255 that was resolved on the merits. *See* Dec. 28, 2007 Order [DE-101]. Thus, Blackmon's motion is a second or successive § 2255 motion. Pursuant to 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." In this case, Blackmon must first obtain an order from the Fourth Circuit Court of Appeals before this court will consider any successive motion under 28 U.S.C. § 2255.

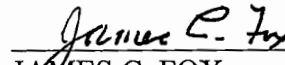
Blackmon has provided no evidence that he has secured the necessary authorization from

the Fourth Circuit. Consequently, this court is without jurisdiction to consider Blackmon's motion, and therefore, his motion [DE-130] must be DISMISSED as successive.

Pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings, this court declines to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2) (A certificate of appealability will not issue unless there has been "a substantial showing of the denial of a constitutional right."); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (Where a court has rejected the constitutional claims on their merits, a petitioner must demonstrate that reasonable jurists would find that the court's assessment of the constitutional claims is debatable or wrong, but when a court denies relief on procedural grounds, the petitioner must demonstrate that jurists of reason would find it debatable whether the court's procedural ruling was correct.).

SO ORDERED.

This the 2 day of March, 2017.



JAMES C. FOX
Senior United States District Judge